IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

TUESDAY, THE 18TH DECEMBER 2007 / 27TH AGRAHAYANA 1929

CRL.A.No. 547 of 2000 (C)

C.C.9/1999 of ENQUIRY COMMR. & SPL. JUDGE, THRISSUR

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APPELLANT/ACCUSED:

ANTONY SIMETHI
ASSISTANT ENGINEER
K.S.E.B., ELECTRICAL MAJOR SECTION
KODAKARA

BY ADV. SRI.T.D.ROBIN
SRI.ARAVINDA KUMAR BABU T.K.
SRI.V.JOHN SEBASTIAN RALPH

RESPONDENT/COMPLAINANT:

STATE OF KERALA
REP. BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA
ERNAKULAM
DEPUTY SUPDT. OF POLICE
VACB THRISSUR

BY PUBLIC PROSECUTOR SRI.P.N.SUKUMARAN

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 18/12/2007 , THE COURT ON 18/12/2007 DELIVERED THE FOLLOWING:

A.K.BASHEER, J.

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Crl.A.No.547 OF 2000

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Dated this the 18th day of December 2007

JUDGMENT

This appeal is directed against the order of conviction and sentence passed by the Enquiry Commissioner and Special Judge, Thrissur against the appellant holding him guilty under Section 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988. The appellant stands sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.25,000/- and in default to undergo simple imprisonment for one year under Section 7 of the Act. He has also been sentenced to undergo rigorous imprisonment for four years under Section 13(1) (d) read with Section 13(2) of the Act. It was however directed that the substantive sentence of imprisonment shall run concurrently and the period of detention undergone by the appellant shall be set off.

2. The prosecution case may be briefly noticed: Appellant was working as Assistant Engineer in Kerala State Electricity Board, Electrical Major Section at Kodakara during November

1997. On November 12, 1997, when PW4 had gone to the office of the appellant with an application to provide a service connection at the residence of PW2, the appellant demanded a sum of Rs.100/- as bribe or illegal gratification to provide the connection. On November 17, 1997, PW2 had gone to the office of the appellant at 2.30 p.m. pursuant to a trap laid at the instance of PW10, the investigating officer. A 100 rupee note smeared with phenolphthalein was subsequently recovered from the drawer of the table in the cabin of the appellant by PW3 in the presence of PWs2, 9, 10 and others. The appellant was arrested after completing the other formalities and later he was charge sheeted for the offence aforementioned.

3. Prosecution examined PWs 1 to 13 and marked Exts.P1 to 19 and M.O. 1 to 7 on its side. No oral or documentary evidence was adduced by the defence. The trial court, on an elaborate consideration of the oral and documentary evidence on record, found that the prosecution had succeeded in establishing the charge. The learned Judge entered the above finding despite noticing the fact that PW2/the defacto complainant and PWs4 and

5 and other independent witnesses had been declared hostile to the prosecution. The trial court found that the evidence of PWs3, 9 and 10 coupled with the other material pieces of evidence on record were sufficient to hold the appellant guilty.

4. It is contended by learned counsel for the appellant that the inconsistent version given by PW2 and the apparent contradictions in the version given by him in Ext.P2, First Information Statement, as compared to the version given by him in his oral testimony before the court ought to have been sufficient to discard the entire prosecution case. It is further contended by the learned counsel that the evidence of PW3 and 9 on the face of it was totally artificial. No reliance could have been placed on the evidence of those two witnesses. It is also contended that the delay in forwarding the First Information Report to the court was fatal to the prosecution.

5. It is not necessary to refer to the oral testimonies of all witnesses who were examined on the side of the prosecution. I shall refer only to the evidence of the material witnesses and the relevant documents. PW2, the defacto complainant stated before

the court that he had gone to the office of the Vigilence and Anti Corruption Bureau at Thiruvananthapuram on November 15, 1997 and lodged a complaint which was recorded by PW10. As instructed by PW10, he had gone to the vigilance office again on 17th November along with PW5 and produced the hundred rupee note which was to be given to the appellant/accused as bribe. The hundred rupee note was taken into custody by the investigating officer under Ext.P5 entrustment mahazar in the presence of PWs3 and 9. The note was smeared with phenolphthalein and it was put in the pocket of PW2 by a Constable as instructed by PW10. PW2 further narrated the procedure followed by PW10 and the witnesses PW2 stated that he met the appellant in his cabin. When PW2 tried to hand over the hundred rupee note to the appellant, he was asked to put the note on top of the file. PW2 further stated that he obeyed the instruction given by the accused and put the hundred rupee note on top of the file lying on the table. To a specific question put to him by the Prosecutor as to whether he saw the appellant taking the hundred rupee note and keeping it in the drawer of the table,

PW2 answered in the negative. At that stage, PW2 was declared hostile to the prosecution and cross examined by the prosecutor. Significantly, in the cross examination PW2 admitted that the phenolphthalein test conducted on the fingers of the appellant was positive. There was discolouration when the fingers of the appellant was put in the solution for the purpose of the test. PW5 who had accompanied PW2 and who was stated to be an independent witness also did not support the prosecution. He stated before the court that he had not gone to the office of the appellant along with PW2. PW4, the wife of PW5, also did not support the prosecution case. She stated that she had met the appellant and submitted the application for providing electric connection to the residence of PW2. But she stated that the appellant had not demanded any bribe for providing electric connection to PW2. Therefore, she was also declared hostile.

6. Now, we come to the evidence of the three material witnesses namely, PWs3, 9 and 10. PWs3 and 9 are respectively the special Tahsildar, Land Acquisition and Tahsildar of the Local Taluk Office. PW3 stated that he had gone to the office of the

investigating officer (PW10) along with PW9 as trap witness, as instructed by the District Collector. He stated that he had seen PW2 producing M.O.I, hundred rupee note before the Investigating Officer (PW10). He also spoke in detail about the pre-trap formalities which were gone through at the office of PW10. He further stated that he and PW9 along with other witnesses had proceeded to the office of the appellant on November 17, 1997 along with the investigating officer and other witnesses. PW3 further stated that on receipt of signal from PW2, he and other trap witnesses entered the office of the appellant. At that time, the appellant/accused was standing near the cash counter in the office. They went to the cabin of the appellant, who came back to his cabin from the cash counter. The appellant was introduced to him and other witnesses. To a query put by the investigating officer as to whether he had accepted the bribe, the appellant answered in the negative. Thereafter, a body search was conducted to ensure that he did not have any money in his pocket. Thereafter, the fingers of the appellant were tested for phenolphthalein. The test was positive.

PW9 opened the drawer of the table in the cabin of the appellant and took out two hundred rupee notes. The note which was smeared with phenolphthalein and handed over to PW3 at the office of PW10 earlier was identified as MO1. The fingers of PW9 were tested for phenolphthalein. The test was positive. PW9 also spoke about the entire procedure in the office of the appellant regarding recovery of the hundred rupee note from the drawer of the table in the cabin of the appellant. In short, PWs3 and 9 narrated the incident without any material contradiction. PW10, the investigating officer also spoke about the procedure followed by him for laying the trap. He further stated that he had recorded Ext.P2, First Information Statement, as spoken by PW2. He had forwarded the First Information Statement to the court after registering the crime. He also spoke about the procedure followed for the purpose of receiving the hundred rupee note from PW2, smearing it with phenolphthalein, etc. and as regards the trap that was laid at the office of the appellant. PW10 had spoken in total conformity with the prosecution case. The learned special Judge found that the evidence of PWs3, 9 and 10

in all respects was totally reliable. The defence had not succeeded in discrediting the evidence of the above three witnesses.

7. It can be noticed that the trial court had mainly relied on the evidence of PWs 3, 9, 10 and also Exts.P1 to P19 and M.O.1 to 6. It is true that PW2 had not supported the prosecution in its entirety. But his evidence shows that he had lodged Ext.P2 complaint before vigilance and had thereafter produced M.O.1, hundred rupee note before the investigating officer on 17th November as instructed by PW10. He had also spoken about the procedure for arranging the trap. Further he also admitted that he had gone to the office of the appellant along with PW5 as instructed by PW10 and handed over the hundred rupee note to the appellant. It is true that PW2 stated that he had kept the hundred rupee note smeared with phenolphthalein on a file on the table of the appellant as instructed by him. It may be noticed that PW2 had categorically stated that the hundred rupee note in question was recovered from the drawer of the table of the appellant. He had stated that PW9 had recovered the hundred

rupee note in his presence and also in the presence of PW3, PW10 and others. It is also significant to note that PW2 in his evidence had admitted that he had taken out the hundred rupee note from his pocket when appellant demanded money. Thus, the prosecution had proved that the appellant had demanded bribe and pursuant to the said demand, PW2 had handed over the money to the appellant. Of course, it was not received by the appellant directly from PW2, but as instructed by him PW2 had put the hundred rupee note on the table. A little later the said note was recovered from the table drawer. Thus, on all material aspects of the prosecution case, the evidence of PWs3, 9 and 10 had been corroborated by the evidence of PW2. In my view the prosecution had satisfactorily established that the appellant had demanded bribe of Rupees hundred from PW2 and had thereafter accepted it from him. In that view of the matter, I am unable to agree with the contention raised by the learned counsel for the appellant that the prosecution had not proved the charge against the appellant. It is true that PWs4 and 5 did not support the prosecution case. Of course PW2 had also failed to support the

prosecution entirely. But that was only on certain immaterial or irrelevant aspects of the case.

8. Learned counsel has raised yet another contention that Ext.P2, First Information Report was forwarded by PW2 to the court belatedly. From the seal of the court it is seen that Ext.P2 was received in the court only on 17th of November, though it was registered on 15th. The endorsement on Ext.P2 reveals that it was forwarded at about 5 p.m. on 15th. Though there is no proper explanation from the prosecution with regard to the short delay, I am not persuaded to accept the contention of the appellant that the delay is fatal to the prosecution case. No other point has been raised by the appellant.

Having regard to the entire facts and circumstances, I do not find any reason to interfere with the finding of guilty entered by the trial court. However, having regard to the fact that the appellant has a family consisting of his wife and four children who are comparatively very young, I am satisfied that imposition of minimum sentence will meet the ends of justice. Therefore, while confirming the order of conviction, the sentence imposed

on the appellant under the three counts is modified. Appellant shall suffer simple imprisonment for six months under Section 7 and he shall pay a fine of Rs.5,000/- and in default he shall suffer simple imprisonment for three months. He shall suffer simple imprisonment for one year under Section 13 (1) (d) read with Section 13(2). The sentence shall run concurrently. The appellant will be entitled to get set off for the period of detention he had undergone.

(A.K.BASHEER, JUDGE)

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A.K.BASHEER, J.

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Crl.A.No.547 OF 2000

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JUDGMENT

Dated 18th Dec. 2007